IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 35787 of 2007(S)

OA.119/2006 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. THE CHIEF POSTMASTER GENERAL,
KERALA CIRCLE, THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL, DEPARTMENT OF POST
DAK BHAVAN, NEW DELHI.

3. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF
COMMUNICATIONS, NEW DELHI 110 001.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR GENERAL

RESPONDENTS:
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1. N.KUMARAN NAIR, SUPERINTENDENT OF POST
OFFICES (RETIRED), KASARGODE DIVISION, RESIDING
AT SREE VIJAYAM, BALLA POST-ANANDASHRAM,
KASARAGODE.

2. SHRI. A.RABINDRANATH, SSPOS TRICHUR
DIVISION, TRICHUR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR &
K.P.BALACHANDRAN, JJ.

W.P.(C) NO. 35787 OF 2007-S

Dated 4th December, 2007.

JUDGMENT

Balakrishnan Nair, J.

The respondents in O.A.No.119/2006 before the Central Administrative Tribunal, Ernakulam Bench are the petitioners. The 1st respondent herein filed the O.A., feeling aggrieved by the omission of the petitioners herein to promote him to the post of Senior Superintendent, which is a post borne on Group A cadre. In his place his junior, the 2nd respondent herein was promoted. The reason was that the applicant has got only 16 days' service when the vacancy arose. But, the Tribunal upheld the claim of the applicant, who is the seniormost for ad hoc promotion to the said post. The petitioners challenge the said order of the C.A.T., which is produced as Ext.P3 in this writ petition, contending that the same violate the Rule governing filling up of a short-term vacancy, a copy of which is produced as Ext.P4. The relevant Rule reads as follows:

> "(v) Filling up of short-term vacancies:-- Whenever short-term vacancies are caused by the regular incumbents proceeding on leave for 45 days or more, study leave, deputation, etc., of less than one year duration, they may be filled by officers available on an approved panel. Such a panel

> may be maintained taking into account not only the actual but also the vacancies anticipated over a period of 12 months in accordance with the existing instructions/holding DPCs. Wherever an officer is not available on an approved panel, the post may be kept vacant, as far as possible."

The said Rule stands in the way of filling up a vacancy, the duration of which is less than 45 days. In this case, admittedly, the duration of the vacancy is 46 days. Therefore, it can be filled up. So, the applicant, who is the seniormost in the feeder category was liable to be promoted, though he has got only 16 days' service left. The above quoted Rule does not stand in the way of filling up a short-term vacancy by appointing a person having less than 45 days' service. So, the challenge against Ext.P3, made relying on Ext.P4, is unsustainable. Accordingly, the writ petition fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

K.P.BALACHANDRAN, JUDGE.

Nm/